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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1198th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 2 November 1992, at 3 p.m.

Chairman: Mr. AGUILAR URBINA

Later: Mr. POCAR

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GE.92-18271 (E)

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Venezuela (CCPR/C/37/Add.14; HRI/CORE/1/Add.3) (continued)

1. The CHAIRMAN invited the Venezuelan delegation to reply to the questions raised in connection with section I of the list of issues to be taken up in connection with the consideration of the second periodic report of Venezuela (document without symbol).

2. Mrs. POITEVIEN (Venezuela) drew attention to an error in paragraph 98 of document CCPR/C/37/Add.14 concerning the Vagrancy Act which, in point of fact, had been challenged twice before the Supreme Court. One challenge had been rejected because of a procedural irregularity and the other was at present being examined by the Court. The public prosecutor could take no further action in the matter until the Court had handed down its decision.

3. As regards the condition laid down (ability to read and write) for the holding of public office (art. 112 of the Constitution), her delegation considered that it was not among those prohibited by article 2 of the Covenant, since it was based not on economic standing or social status, but on the need to restrict access to any public office to persons capable of performing the functions it entailed (CCPR/C/37/Add.14, para. 9). In that context, she emphasized that the illiteracy rate had declined, as was clear from Venezuela's core document (HRI/CORE/1/Add.3, para. 19).

4. With respect to the status of the Covenant in the Venezuelan legal system, she said that the rights embodied in the Covenant were on a legal par with constitutional provisions. Article 50 of the Constitution stated, for example, that the enunciation of rights and guarantees contained in the Constitution must not be construed as a denial of others which, being inherent in the human person, were not expressly mentioned therein, and that the lack of a law regulating those rights did not impair the exercise thereof (CCPR/C/37/Add.14, para. 12). The rights set forth in the Covenant could therefore be invoked by any inhabitant of Venezuela under the amparo procedure. She also drew attention to a constitutional reform bill intended to place the Covenant above the Republic's Organic and other Laws.

5. In reply to a question whether a law could be contrary to the Covenant, she said that, in view of the way the Covenant had been integrated into national legislation, any law contrary to the Covenant would be contrary to the Constitution as well as to legal doctrine on the status of the Covenant. In that case, it could be challenged by any individual or the Attorney-General of the Republic before the competent courts.

6. Replying to a question concerning the acquisition of Venezuelan nationality, she referred the Committee to paragraph 48 of the second periodic report (CCPR/C/37/Add.14) according to which the Parliamentary Commission which had revised the constitution had proposed that paragraph 1 of article 37

should be amended to extend the status of Venezuelans by naturalization to male aliens married to Venezuelan women.

7. With respect to the question of protection against administrative acts, she explained that Venezuela had approved the Organic Law on Administrative Procedure which specified the remedies available against acts by the administration regardless whether they had specific or general effects: application for reconsideration by the official responsible for the administrative act in question; hierarchical remedy addressed to that official's superior if the first remedy failed to have the results expected of it; and lastly, remedy before a court which could be requested to declare the administrative act in question null and void, regardless whether arbitrary, insufficiently justified or considered illegal or unconstitutional.

8. Explaining the meaning of the expression "brief, summary and effective procedure" used in article 5 of the Amparo Act (CCPR/C/37/Add.14, para. 19), she said that, an individual, at the same time as he challenged an administrative act, could bring amparo proceedings to obtain the protection of a right more rapidly than if he were to await the court's decision. If the judge considered that immediate protection was unnecessary, he rejected the amparo action and indicated that adequate protection would be provided at the time the decision was handed down. Were he to consider that immediate protection was necessary, he accepted the amparo action provisionally pending the pronouncement of the judgement.

9. Referring to article 61 of the Venezuelan Constitution (CCPR/C/37/Add.14, para. 453) and article 26 of the Covenant, she said that in her view there was no contradiction between those two articles since the Constitution proclaimed not only the right of association but also the right to profess a religion and the right to express one's thoughts in speech.

10. Mr. PRADO VALLEJO, in thanking the Venezuelan delegation for its replies, said he was gratified by the role played by the Government Procurator's Department and particularly by the decision it had taken to draw up extremely timely guidelines on what should be done by judges and State bodies concerning human rights. He hoped that those guidelines would be followed so that a major step forward could be taken in protecting human rights.

11. Mr. ARTEAGA (Venezuela), replying to question (d) of section I of the list of issues to be taken up, referred to the events mentioned in paragraphs 52, 53, 66, 67 and 68 of the report. The investigations embarked upon following the discovery of a common grave containing the bodies of disappeared persons would be continued and action would be taken on any complaint reporting the discovery of other common graves.

12. Mrs. POITEVIEN (Venezuela), referring to the compensation of victims, added that the Government Procurator's Department could, at the same time as it brought a criminal action, request that a civil action should be brought for compensation of the victims of criminal offences. It had not so far done so becaues no request had been received except in one case when the request had been untimely. It had, however, formulated its general approach in connection with that case, which was that it could request the criminal court

judge to decide on reparation, restitution or compensation. Moreover, an individual could obtain compensation by bringing an ordinary civil law action.

13. The CHAIRMAN invited the Venezuelan delegation to reply to the written questions contained in section II of the list of issues to be taken up in connection with the consideration of the second periodic report of Venezuela (document without symbol), reading as follows:

"II. Right to life, treatment of prisoners and other detainees, liberty and security of the person, and right to a fair trial (arts. 6, 7, 9, 10 and 14)

"(a) What measures have been taken to prevent and punish the trafficking in organs?

"(b) Has the Police Organization Bill mentioned in paragraph 125 of the report been adopted? What are the rules and regulations governing the use of firearms by the police and security forces? Have there been any violations of these rules and regulations and, if so, what measures have been taken to prevent their recurrence?

"(c) Please elaborate on the status, functions and activities of the new security units referred to in paragraph 69 of the report.

"(d) What concrete measures have been taken by the authorities to ensure that all courts give due attention to cases of ill-treatment at the hands of the police and security forces? (See para. 80 of the report).

"(e) What legal provisions guarantee that no one is subjected to medical and scientific experimentation?

"(f) What specific measures are envisaged to address the problems affecting the supervision of places of detention and the procedures for receiving and investigating complaints? (See paras. 182-184 of the report).

"(g) Please clarify the compatibility with articles 8 and 14 of the Covenant of provisions of the Vagrancy Act relating to the custody of vagrants and malefactors in re-education centres, farming-settlements of work-camps. (See para. 97 of the report). Have the initiatives by the Parliament or the Office of the Attorney-General led to the repeal of the Act? (See paras. 98 and 122 of the report).

"(h) Please provide information on any concrete measures that may have been taken by the Public Prosecutor's Department to ensure strict adherence by the police and security forces to rules relating to the liberty and security of the person as enshrined in article 9 of the Covenant. (See paras. 104 to 108 of the report). Have such initiatives led to any progress to date?

"(i) Has the Legal Defence Bill referred to in paragraph 251 of the report been adopted by the Congress?"

14. Mr. ARTEAGA (Venezuela), replying to question (a), explained that trafficking in organs was covered by the Organ Transplants and Anatomical Material of Human Origin Act. Under article 1 of that Act, human organs could be removed and used for therapeutic purposes only at institutes and hospital centres authorized to do so after consultation with the National Academy of Medicine and the Venezuelan Medical Association. According to article 5 of that Act, payment for such organs or anatomical material used for therapeutic purposes was forbidden. Persons who, for profit, acted as intermediaries in obtaining organs or anatomical material for therapeutic purposes were punishable by four to eight years' imprisonment. The Medical Deontological Code also stated that a doctor who trafficked in human organs for profit or promoted such trafficking was committing a serious offence against professional ethics, without prejudice to his civil and criminal liability.

15. Referring to question (b) of section II, he said that the Police Organization Bill mentioned in paragraph 125 of the report had not yet been approved by Congress which had, however, made progress in considering it. The use of firearms by the police and security forces was governed by the Penal Code and by article 24 of the Law on Weapons and Explosives. Firearms could be used only for legitimate defence or to maintain public order. The arbitrary or abusive use of force or firearms by law enforcement officials was considered to be an offence. Such use was regarded as a serious matter by the Metropolitan Police's Disciplinary Regulations, and even as extremely serious when firearms were used by a person off duty acting without the authorization of his superior. The use of firearms was also regulated by other national provisions. The Code of Military Justice, for example, stated that firearms could be used only if there was no other way of having an order obeyed.

16. With respect to the new security units mentioned in paragraph 69 of the report (question (c)), he explained that municipal councils could establish their own police forces under the Organic Law on Municipalities.

17. With reference to question (d), he drew attention to the work done by the Government Procurator's Department and the information procedure (Información de Nudo Hecho intended to establish the liability of officials accused of maltreatment (CCPR/C/37/Add.14, paras. 74 to 80).

18. As for the question of medical and scientific experiments on human beings (question (e)), he explained that, under the Medical Deontological Code, the doctor's foremost duty was to protect the life and health of the person subjected to an experiment, to explain to him the nature, purpose and risks of the experiment and to obtain his consent in writing. Moreover, even after such consent had been obtained, the doctor assumed full responsibility for the experiment, which should be interrupted at any time at the request of the person concerned. The matter was also dealt with in other articles of the Medical Deontological Code.

19. The reply to question (f) was very simple: complaints were lodged through representatives of the Public Prosecutor's Department. It would appear that the Venezuelan delegation had already replied to question (g) at the previous meeting.

20. Referring to question (h), he described the efforts made to coordinate the operations carried out by the Public Prosecutor's Department in 1991 with the police. For example, surprise visits to police pre-trial detention centres had been made by night by representatives of the Public Prosecutor's Department and lawyers in the Caracas metropolian area, particularly on days considerd to be critical, namely, Friday and Saturday in the evening. A comparison of the results of that operation with a similar one carried out in 1990 revealed that the number of arbitrary detentions had declined. In 1991, moreoever, representatives of the Public Prosecutor's Department had inspected a total of 10,428 pre-trial detention establishments of various kinds. Three hundred and seventy-one investigations had been carried out in connection with failure to observe pre-trial detention regulations or shortcomings in pre-trial detention establishments.

21. The Bill referred to in question (i) had not been adopted by Congress, but it was the Venezuelan delegation's understanding that the Asociación nacional de clínica jurídica was dealing with the matter. That Association was a non-governmental organization consisting mainly of law students who provided legal defence services free of charge, mainly in low-income areas. It was active throughout the country and had representatives in almost all the capitals of the states comprising the Republic of Venezuela.

22. Mrs. POITEVIEN (Venezuela) recalled that the State enabled persons with low-incomes to avail themselves of the services of attorneys in respect of agrarian questions and labour matters, minors' attorneys and representatives of the Public Prosecutor's Department in order to protect their rights.

23. The CHAIRMAN invited members of the Committee to raise any questions they might have under section II of the list of issues to be taken up in connection with the consideration of the second periodic report of Venezuela.

24. Mr. PRADO VALLEJO noted with satisfaction that Venezuela's report was comprehensive and detailed, and congratulated the Venezuelan Government on having described so frankly the difficulties encountered in the application of the Covenant in the country.

25. He was particularly concerned by the apparent impunity enjoyed by certain persons responsible for human rights violations, which affected Venezuelan society as a whole. Indeed it seemed, as the Andean Commission of Jurists had noted in its 1992 report on its mission to Venezuela, that investigations of those violations were unduly long and that, when the trials came to an end, the sentences pronounced were in general very light or even quashed on appeal. Problems due to the difficulty of obtaining access to the courts, to delays in judicial procedure and shortcomings of the system in general admittedly arose in most of the Latin American countries, but it appeared that the situation was particularly serious in Venezuela, whose Government nevertheless claimed to be democratic. All reports mentioned hundreds of cases of extrajudicial executions, murders and disappearances for political reasons. Moreover, when investigations were carried out, the government agents responsible for those human rights violations were brought before the military courts whereas the victims were civilians and the offences in question were of the ordinary law type. He therefore wondered whether the Government intended to conduct an appropriate investigation into the atrocities committed (he mentioned in

particular the discovery of over 60 bodies found in common graves) and to ensure that the trials held were in conformity with ordinary criminal law procedure.

26. On the question of the treatment of detainees, he noted that a large number of complaints had been lodged, particularly concerning the transfer of detainees to inaccessible rehabilitation centres where, being isolated, they did not receive any visitors and were therefore deprived of their legitimate right to prepare their defence with their lawyers. Furthermore, even if under the law the maximum period of pre-trial detention was eight days, it would appear that in many cases that time limit was exceeded, and even that some persons were held in pre-trial detention without any valid reason, contrary to the provisions of article 9, paragraph 1 of the Covenant. He asked whether the Venezuelan Government intended to take steps to correct the regrettable situations he had mentioned.

27. Mr. SADI wondered about the real causes of the 1989 agitation and why hundreds of people had apparently been shot down in an arbitrary fashion. The lawful maintenance of public order hardly seemed to justify such measures.

28. The Venezuelan delegation had stated, with respect to the traffic in organs, that the law was very strict, and he wondered whether the problem actually arose in practice in Venezuela as it did in a large number of other countries of the world, where it was assuming alarming proportions.

29. Referring to the observation made in paragraph 82 of the report concerning "the lack of resources and expertize among forensic physicians to determine whether an individual has been subjected to torture that leaves no external traces", he pointed out that the United Nations Voluntary Fund for Victims of Torture provided technical and financial assistance to countries confronted by that type of problem, and that regular seminars were held at the regional level to provide information on ways of curbing torture. He wondered whether the Venezuelan Govenment intended to request the assistance thus available.

30. Lastly, he asked whether environmental questions were taken into account in connection with the right to life in Venezuela and whether nature conservation and pollution control measures had been adopted with a view to protecting the population.

31. Mrs. HIGGINS also thanked the Venezuelan Government for its honest report which contained a large amount of useful information. Her questions were essentially the same as those put by Mr. Prado Vallejo. She was under the impression that problems due to human rights violations could be resolved in Venezuela only if a solution was found to social conflicts. She also noted that the country's institutions were still fragile and that it was vital in the first place to strengthen the judiciary and to protect it against political influences. In that connection she would like to know what the Venezuelan delegation had to say concerning the numerous allegations of administrative corruption and the impunity enjoyed by members of the armed forces responsible for torture, maltreatment and disappearances. It was her understanding that, in practice, the military courts should not handle cases involving civilian victims, as the Attorney-General of the country himself had

recognized, but the question which then arose was whether the civil courts were themselves competent to judge such cases. In that connection, she would like to know how many cases of that type had been brought before the courts, what kind of courts had heard them and what had been the results.

32. She also wondered about the measures taken to give effect to the provisions of article 2, paragraph 3 (a) and article 9, paragraph 5, of the Covenant, which concerned the right to an effective remedy and the right to compensation, particularly in cases of torture and maltreatment. The Human Rights Division of the Public Prosecutor's Department was admittedly doing admirable work, although it seemed that the law was not always applied in practice and that the victims were often the most disadvantaged persons who did not have the means to enforce their rights fully. Reforms had certainly been introduced to speed up the procedure, avoid prolonged detention and improve detention conditions, but she was not convinced that everything had been done to provide all victims with effective remedies against torture, arbitrary arrest and maltreatment in prison. She would like to hear the Venezuelan delegation's observations on those points.

33. Mr. MÜLLERSON said he shared the concern expressed concerning allegations of extrajudicial executions and torture in Venezuela. Several reports had been published on the subject, particularly by Amnesty International, which had mentioned specific cases of arrests, torture and maltreatment in December 1991 and 1992. Amnesty International had also stated that investigations had been undertaken with a view to punishing those guilty of such human rights violations. He would like to know what the Venezuelan Government's reaction to those allegations had been and whether the investigations had actually been carried out.

34. He was surprised by the existence, in a democratic country like Venezuela, of a Vagrancy Act and provisions that could have previously been applied by totalitarian regimes to do away with criminals. It was stated in paragraph 98 of the report that the Act had been challenged since it was regarded as a violation of certain constitutional principles. He would therefore like to know whether that Act, which was obviously unconstitutional, had been repealed. Furthermore, he would appreciate further details about pre-trial detention conditions.

35. Mr. WENNERGREN recalled that, according to article 9, paragraph 3 of the Covenant "anyone arrested or detained ... shall be brought promptly before a judge ...", and referred in that connection to paragraph 101 of the report, which indicated that a person could be held in custody for a total period of 16 days; that seemed to be excessive in view of the provisions of the Covenant. He also asked how soon the person arrested or detained could contact his lawyer. That was an important point, because if he had been tortured the lawyer - if contacted rapidly - could make sure that the victim was given a medical examination immediately; that would make it possible to avoid the problem mentioned in paragraph 82 of the report in cases where torture had not left any visible traces. In its reports on Venezuela, Amnesty International had described the various types of torture allegedly used which, after a few weeks, left no external marks. It had also emphasized that one of the matters of greatest concern was the lack of independence of the Institute of Forensic Medicine which was part of the judicial police and

which very often ordered investigations only a long time after torture had taken place. He would like to know the opinion of the Venezuelan delegation on the subject.

36. Mr. EL SHAFEI wondered whether the provisions of article 51 of the Code of Criminal Procedure referred to in paragraph 279 of the report were in conformity with those of article 14, paragraph 5 of the Covenant. He would also like to know whether the draft reform of the Code of Criminal Procedure had been adopted, whether the bill on the individual right to liberty mentioned in paragraph 111 of the report had been adopted by the National Congress, and whether the provisions specifying forced labour for detainees in prison establishments and conscripts performing their military service were really in conformity with the provisions of article 8 of the Covenant, since an ILO Committee of Experts had already expressed the view that that practice should not be authorized.

37. Mr. LALLAH commended the quality of the delegation sent by the State party as well as the relative quality of the second periodic report - relative because, under the headings dealing with articles as important as article 6 concerning the right to life, article 7 concerning torture or article 9 concerning the right to liberty and security of person, the report was confined to a discussion of the law but never described the actual situation except in paragraphs 66, 80 and 109. Admittedly it was stated in paragraph 80 that, despite the concern of the Public Prosecutor's Department that proper inquiries should be conducted in connection with informations laid, it had been found that some courts did not give the relevant requests all the priority attention called for. But the report failed to say what the Government was doing to correct that situation.

38. Venezuela's second periodic report had been prepared and submitted in May 1992 and contained information on what had happened in 1989. But what was the position as regards the maltreatment, torture and in particular the extrajudicial executions mentioned by Amnesty International as having taken place in June and August 1991, and later on in January and March 1992 - namely, during periods covered by the report? Furthermore, he would like clarification of the death of a 12-year-old boy killed in Caracas by the Metropolitan Police which had opened fire on blocks of flats when it was trying to put down an anti-Government demonstration. How violent had that demonstration been and how had the child who had been killed behaved?

39. He would also appreciate explanations in connection with paragraph 69 which stated "... in every country engaged in economic restructuring, as is the case with Venezuela, problems exist at the individual level; it is precisely in this area that the right to life is being regularly and clearly violated". He failed to see any logical connection either between the two parts of the sentence, or with the rest of the paragraph, which referred to the establishment of new security units to counter the action of criminal elements - unless, unfortunately, the answer was, that, as a result of the economic restructuring measures adopted by the Government, the population was demonstrating its discontent and that, being unable to cope with the situation, the State was using force against the demonstrators.

40. At the previous meeting the Venezuelan delegation had admitted that, when persons were detained in military prisons nobody seemed to be able to monitor what happened there, regardless whether or not a state of emergency had been declared. Yet irrespective of any state of emergency, there could be no derogation from article 7 of the Covenant. He would appreciate an explanation in that connection.

41. Lastly, since Venezuela had responded promptly to the Committee's observations in respect of the Optional Protocol concerning a case referred to it, he was surprised that the Committee had received no further communication from Venezuela when the representatives of the State party themselves admitted that human rights violations took place in that country. The Venezuelan delegation had stated that members of the legal profession were aware of the communication procedure but he wondered whether the Venezuelan Government had made sure that all the persons concerned had been informed of it.

42. Mr. ARTEAGA (Venezuela) noted that members of the Committee had expressed concern and sometimes even quite justified criticism. The Venezuelan delegation recognized that matters were far from perfect in its country, which had nevertheless made progress along the path of democracy and which, for 30 years, had made a considerable effort to promote human rights. Yet improvements were obviously still necessary to solve all the problems that arose in connection with the application of the Covenant. In any case, the Committee could rest assured that Venezuela would do everything in its power to strengthen democracy and above all the State, based on the rule of law. Lastly, his delegation emphasized that the report was transparent and sincere, and reflected the Venezuelan Government's determination to ensure respect for human rights.

43. By way of illustrating the efforts being made, he mentioned several specific measures that the Government intended to take in the form of draft legislation that had already been submitted to Congress for consideration. There was, first of all, the Constitutional Reform Bill and then a number of others such as the Penal Code Reform Bill, the Federal Police Bill, the Bill for improving the professional qualifications of police officers, the Bill for the reform of the Prison System Act, the Legal Protection Bill, and the Code of Criminal Procedure Bill - many of which had originated with the State Reform Commission that had been established in 1984 to revitalize the democratic system. He also mentioned the demonstrations, marches and other forms of peaceful demonstration Bill, the Bill to prohibit the use of firearms to control demonstrations, the Bill for the partial reform of the Meetings, Political Parties and Demonstrations Act, the Organic Indigenous Communities, Peoples and Cultures Bill, the Protection of Private Life Bill and the Environment Bill. Those Bills demonstrated that the Venezuelan Government was determined to take the concern expressed by members of the Committee into account.

44. Other bills were still being drafted and had not yet been submitted to Congress. For example, the Government Prosecutor's Department was drafting a bill intended to replace the Vagrancy Act, as recommended by the State Reform Commission. An Organic Religious Faiths Bill was also being drafted (in connection with article 65 of the Constitution). That, too, demonstrated a determination to promote the application of the Covenant in Venezuela.

45. Several members of the Committee had referred to information originating with quite respectable non-governmental organizations, and had echoed their concern. The Venezuelan authorities were aware of the cases referred to and were endeavouring to elucidate them. For example, the question of the Eldorado prison colony, as well as that of the common graves mentioned by Mr. Prado Vallejo, were being investigated; the results of those investigations were not yet available, however, so that those responsible had not yet been prosecuted. It was precisely in order to provide members of the Committee with information about various specific cases they had mentioned that one of the members of the Venezuelan delegation was a representative of the Public Prosecutor's Department, which was an independent body. For the rest, Venezuela's second periodic report was the result of a joint effort by the Ministry of Foreign Affairs, the Public Prosecutor's Department and the Judicature Council.

46. Mr. Sadi had asked what had happened in February 1989 in Venezuela. The events in question, which had caught the Venezuelans themselves unaware, had been the result of a social explosion brought about by the economic measures introduced by the Government at the beginning of 1989 in connection with the economic adjustment programme. An increase in public transport fares had caused discontent among passengers; events had subsequently snowballed and the police, unable to control the pillaging and vandalism that had taken place, had been obliged to call upon the armed forces to restore order. Periods of considerable confusion, as had prevailed at that time, were conducive to abuses and violations.

47. Venezuela had experienced other difficulties since 1989, for in 1992 the failed military coup d'état against democratic institutions had put democracy to the test and had at the same time stimulated thinking about human rights and greater awareness of such rights. Venezuelans were expressing their aspirations and desires more and more and were increasingly aware of their fundamental rights. The Venezuelan Government and Public Prosecutor's Department intended to continue to inform the people of their rights under the international commitments that had been assumed by successive democratic Governments.

48. Mrs. RUESTA de FURTER (Venezuela), replying to a point made by Mr. Lallah who had expressed surprise that the Committee had not received communications from Venezuela at a time when human rights violations were being reported in that country, said that probably the reason was that persons considering that one of their rights as set out in the Covenant had been violated had not yet exhausted all available domestic remedies - a condition that, according to article 2 of the Optional Protocol, had to be satisfied before a written communication could be submitted to the Committee. Another possibility was that the persons in question still felt protected by the Venezuelan legal system. On the other hand, complaints of human rights violations had been submitted to various other United Nations bodies, such as the Commission on Human Rights, the Special Rapporteur to examine questions relevant to torture, the Special Rapporteur on summary or arbitrary executions and the Working Group on Enforced or Involuntary Disappearances. The complaints in question were being investigated and the Venezuelan Government had duly replied to the various bodies which had raised questions in that connection by indicating the progress made with those investigations. Her delegation therefore invited

members of the Committee to refer to the reports prepared by the Special Rapporteurs and the Working Group in question.

49. Mr. Sadi had asked why the Venezuelan authorities had not requested assistance from the United Nations Voluntary Fund for Victims of Torture in view of the large number of cases of torture reported in the country. The Venezuelan Government, which had strongly supported the establishment of that Fund, had not yet called upon it for assistance because a State based on the rule of law was quite capable of protecting victims of torture. Indeed, under article 46 of the Venezuelan Constitution, any act by the public authorities which infringed or restricted the rights guaranteed by the Constitution was null and void, and the officials who had ordered or carried it out bore criminal, civil or administrative liability, as the case may be. In addition there was article 1196, paragraph 2, of the Civil Code which stated that a judge could grant compensation to the victim in the event of bodily injury, damage to the honour and reputation of the victim or his family or violation of his rights.

50. As regards the prevention of trafficking in children's organs, she referred to what was being done by the Working Group on Contemporary Forms of Slavery of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which for many years had been receiving complaints concerning the traffic in and transplantation of children's organs. Interpol had stated that so far it had no proof of such traffic. A similar reply had been received from the technical juridical police when questioned by the Venezuelan authorities although it had added that it was very much on the alert since it was aware of the existence of the problem. In 1992, however, Interpol had informed the Sub-Commission that it had proof of the existence of that traffic and that great vigilance was called for. It was for that reason that Venezuela had insisted on the inclusion, in the Convention on the Rights of the Child, of article 35 which obliged States parties to take all appropriate measures to prevent the abduction of, sale of or traffic in children for any purpose or in any form. Traffic in organs was not mentioned, but it was obviously connected with the sale of children. Furthermore, the first complaints received at the international level concerning the sale of children's organs indicated that such sales were effected under cover of spurious adoptions. Venezuela, which was greatly concerned by the problem, considered adoption to be a noble institution that had unfortunately been corrupted by a revolting practice. Since adoption abroad was not recognized by the Venezuelan legal system, Venezuela had made an interpretative declaration concerning article 21 of the Convention on the Rights of the Child on adoption abroad, since the idea that financial benefit could be derived from operations of that nature was inadmissible.

51. Mr. Pocar took the Chair.

52. Mrs. POITEVIEN (Venezuela) said that the Human Rights Division of the Public Prosecutor's Department had, during 1991, requested 2,500 informations (informaciones de nudo hecho) from the competent courts. In other words, it had deemed it necessary in 2,500 cases, to investigate the conduct of certain officials belonging to the police (national guard and metropolitan police) or prison services. She added that the second periodic report (CCPR/C/37/Add.14) mentioned the difficulties encountered by the authorities in their efforts to

deal with complaints with all due speed. Moreover, according to the Code of Criminal Procedure, if an official abused his powers in the exercise of his functions, a complaint could be lodged with any judge who was then required to investigate the matter without delay. In any event, the public prosecutors made sure that the courts heard such cases within a reasonable time. Unfortunately, it would seem that all those measures were not enough, and that very often police bodies took a long time to communicate the information required. Regular meetings were held with the officials of those bodies who were informed by the Ministry of Justice what information was required, that for the moment only a preliminary investigation was being carried out and that, in any event, the decision to prosecute or not would be taken at the end of that first stage; the Ministry also warned against any arbitrary action and emphasized that the information required should be communicated rapidly to the courts. Despite the obvious delays in that respect, the authorities had nevertheless achieved a degree of success for in 1991 the Public Prosecutor's Department had examined 2,500 complaints.

53. Replying to a question put by Mr. Sadi, she said that two public prosecutors qualified to act in environmental matters had recently been appointed, thus bringing to three the number of public prosecutors dealing with such questions. In addition, there were other bodies subordinate to the Executive, such as the Ministry of the Environment, which had been established in 1975 at a time when very few countries were taking environmental considerations into account. Furthermore, Venezuela had adopted an Organic Law on the Environment, the provisions of which were particularly innovative.

54. Replying to a question from Mrs. Higgins on the corruption of officials, she said that a large number of cases were at present before the courts. The corruption of officials was discussed extensively in the media which had exposed a large number of cases, and the mere fact that so much publicity was given to them revealed a genuine desire to correct the situation. It also demonstrated the freedom of expression that prevailed in Venezuela and guaranteed that progress would be made in that sphere.

55. Referring to the question of pre-trial detention, she acknowledged that eight days in police custody was much too long. She explained that at the end of that period the police had to bring the accused before a magistrate who was required to decide, within 96 hours, whether he should be charged or not. If the accused was not charged, he was released and the case was closed. In general, however, the magistrate was allowed eight days, so that the maximum period of pre-trial detention amounted to 16 days. The length of that period was likely to open the door to abuses and arbitrary action. She added that the Code of Criminal Procedure had been drafted a long time ago when communications were difficult in the country and that it should certainly be reformed. Moreover, it was planned to reform the entire judicial system and to introduce a new court consisting of justices of the peace to relieve the judges of courts of first instance of their enormous workload. The Judicature Council had also appointed itinerant judges to try cases in courts where magistrates were overwhelmed with work. Generally speaking, there was a shortage of judges in Venezuela. Furthermore, only 2 per cent of the national budget was devoted to the judicial system and the authorities wanted to double that amount. Some projects were still in abeyance owing to budgetary limitations. The authorities were nevertheless trying to promote cooperation

between various competent bodies (the Public Prosecutor's Department, the Ministry of Justice, the Ministry of the Interior and the courts) as well as training in human rights matters. They were aware of the problems involved and were constantly endeavouring to improve the situation. Specifically, the public prosecutors of the Public Prosecutor's Department were responsible for ensuring that there were no arbitrary detentions or detentions incommunicado, and that the accused could communicate with a lawyer. For that reason, the Public Prosecutor's Department was immediately notified when an investigation was begun. A public prosecutor of the Public Prosecutor's Department in principle participated in the questioning conducted by technical judicial police officers. For example, he asked the accused whether he had any complaints concerning the way he had been treated by the police and whether he was making his statements of his own free will. Nevertheless, some of the accused failed to complain to the public prosecutor for fear of police reprisals; the Public Prosecutor's Department was powerless in such cases. The right to defence counsel was granted immediately. Furthermore, if the accused did not have the means to pay a lawyer of his choice, he was provided with legal defence services from the moment he was charged. Lastly, she mentioned an in-depth study of pre-trial detention carried out by a public prosecutor of one of the states of Venezuela. The purpose of that study had been to collect information in order to improve the training of police officials in human rights matters and to prevent the abuse of power by officials. The study had resulted in a considerable decline in the number of arbitrary detentions in that state.

56. She then referred to the question of public demonstrations and mentioned, by way of example, a demonstration organized the previous September by the Federation of University Centres. The Federation had informed the competent authorities beforehand and a meeting had been held between its representatives, those of the Public Prosecutor's Department and the police. The students themselves had seen to the maintenance of order to prevent the infiltration of elements who might have made things get out of hand. The police for their part had received orders to limit the use of force. The demonstration had taken place without incident; nobody had been injured nor had any damage been done. It had therefore been a success both for the organizers as well as for the authorities. The latter advocated persuasion rather than repression, and their efforts had already borne fruit as was proved by that demonstration.

57. On the question of torture she referred to the second periodic report (CCPR/C/37/Add.14), which mentioned the difficulties encountered in identifying cases of torture by means of medical expertise. She had already discussed that problem. The Special Rapporteur to examine questions relevant to torture had, moreover, received complaints concerning the matter, which the Venezuelan authorities were examining carefully, and a report was being prepared for the Committee against Torture. Apart from physical torture there was also psychological torture and the authorities, which were aware of the problem, had requested competent experts, namely, psychiatrists and doctors, to indicate the characteristics of that type of torture. All those efforts were designed to strengthen the procedure used to investigate allegations of torture.

58. In her view the question raised by Mr. Müllerson concerning the Vagrancy Act was due to a misunderstanding, since it had apparently referred to an Act adopted before the establishment of democracy in Venezuela and the entry into force of the present Constitution.

59. Her delegation had no reliable information concerning the specific cases of human rights violations mentioned by members of the Committee, and would like to defer its reply on the subject so as to be able to provide rigorously accurate information. Nevertheless, she had duly noted the questions asked and would not fail to provide the Committee with detailed replies, either at the next meeting devoted to the consideration of the second periodic report (CCPR/C/37/Add.14) or in writing on her return to Venezuela.

60. Replying to Mr. El Shafei's question about forced labour, she drew attention to what was stated in paragraph 92 of the report, namely, that although under article 8, paragraph 3 of the Covenant, work done by inmates at prison institutions was not qualified as forced labour, it was in practice for the prisoner had no option but to do it since it was compulsory by the very nature of the penitentiary system and helped to rehabilitate the offender.

61. Mr. LALLAH had criticized the establishment of the new security units in Venezuela mentioned in paragraph 69 of the report. That was probably a misunderstanding, for the State had begun to create new security units within municipalities simply to counter the action of criminal elements. The State must protect citizens not only against arbitrary action by officials but also against such elements. In that sense, the establishment of those security units constituted a step forward in the protection of human rights.

62. Lastly, she said that the mayors and governors of the states were now elected directly by citizens. That constituted an improvement of the political system and ensured that citizens participated more fully in public affairs.

63. She concluded by thanking the members of the Committee for their questions and observations which she would certainly bring to the knowledge of her country's competent authorities.

64. The CHAIRMAN thanked the Venezuelan delegation for its statements and replies to the questions put and invited the Committee to continue its consideration of Venezuela's second periodic report (CCPR/C/37/Add.14) at a future meeting.

The meeting rose at 6.05 p.m.